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HONORABLE SALVADOR
MENDOZA JR.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

ANDREW M. RICHMOND, a
Washington Resident,

Plaintiff,

v.

SPOKANE COUNTY SHERIFF'S
OFFICE, a division of Spokane
County, Washington (a Washington
State County),

Defendant.

No. 2:21-cv-00129-SMJ

ANSWER TO COMPLAINT

INTRODUCTION

Defendant Spokane County Sheriff's Office ("SCSO")¹ hereby admit and deny the allegations in Plaintiff's Complaint as follows:

¹ Plaintiff names Spokane County Sheriff's Office as the sole defendant in his Complaint. Spokane County Sheriff's Office is not a proper defendant because Spokane County Sheriff's Office, a department of Spokane County, is not an entity capable of being sued. *Tahraoui v. Brown*, 185 Wn. App. 1051, 2015 WL 563806 at * 7-8 (2015); *see also, Nolan v. Snohomish County*, 59 Wn. App. 876, 883, 802 P.2d 792 (1990); *Broyles v. Thurston County*, 147 Wn. App. 409, 427-28, 195 P.3d 985 (2008).

ANSWER TO COMPLAINT - 1
CASE NO. 2:21-cv-00129-SMJ

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1 Plaintiff's Complaint includes introductory text including quotations of a UC
2 Davis Law Review Article and a Spokesman Review online article. The content of
3 those articles speak for themselves. Defendant admits that Plaintiff reported racist
4 comments by another law enforcement officer, Jeffrey Thurman, and Thurman was
5 later terminated. Plaintiff denies the remaining allegations in the introduction to the
6 Complaint.

7 **PARTIES, JURISDICTION, AND VENUE**

8 1. Defendant is without sufficient knowledge or information to affirm or
9 deny Plaintiff's averments in Paragraph 1 and therefore deny the same.

10 2. Defendant Spokane County Sheriff's Office admits it is a department
11 of Spokane County, which is municipal corporation in the State of Washington.

12 3. Admitted.

13 4. Defendant admits that there is jurisdiction in this Court for Plaintiff's
14 federal claims under Title VII. Defendant denies that jurisdiction is proper for
15 Plaintiff's state law claims under the Washington Law Against Discrimination
16 ("WLAD") because Plaintiff did not comply with the Washington tort claim statute,
17 RCW 4.96.020, prior to initiating this lawsuit.

18 **RELEVANT FACTS**

19 5. Defendant admits that Plaintiff is African-American and was employed
20 as a Deputy Sheriff by Spokane County in the Spokane County Sheriff's Office
21 ("SCSO") until on or about August 12, 2019. Defendant admits that Plaintiff was
22 one of two Black law enforcement officers employed by the SCSO at the time of
23 Plaintiff's employment.

24 6. Defendant admits that it currently has approximately 209
25 commissioned law enforcement officers. Defendant admits that per the U.S. Census
26 Bureau, Spokane County has an approximate population of 523,000 people as of
27

1 2019; 2% of that population is Black and/or African-American; and 9.1% of the
2 remaining population is non-White.

3 7. Defendant admits that Plaintiff reported the incident described in
4 Paragraph 7 to the SCSO Office of Professional Standards, which performed an
5 internal affairs (“IA”) investigation. That investigation revealed objective evidence
6 that Thurman made a racist statement to Deputy Kullman, namely, that Thurman
7 asked Kullman if he was “ready to go out and kill some n*****s.” Defendant admits
8 that Thurman and Deputy Kullman are white. Defendant is unable to determine the
9 personal knowledge of Plaintiff, therefore lacks sufficient information to admit or
10 deny the remaining allegations, and therefore deny the averments in Paragraph 7. To
11 the extent Plaintiff alleges anything different than what is expressly admitted,
12 Defendant denies the same.

13 8. Defendant is unable to determine what “Thurman was told” about
14 Plaintiff being present and hearing Thurman’s statements, and therefore lacks
15 sufficient information to admit or deny that allegation, and therefore denies it.
16 Defendant admits that Plaintiff stated during an IA investigation that Thurman
17 approached Plaintiff shortly after the alleged racist statement and said he had only
18 been referring to “inner city” Black people who “loot and riot,” and Thurman denied
19 this allegation. Plaintiff does not define what he means by “inner city,” “peaceful
20 protest,” or “looting,” and on that basis Defendant denies the remaining allegations
21 in Paragraph 8. To the extent Plaintiff alleges anything different than what is
22 expressly admitted, Defendant denies the same.

23 9. Defendant admits Thurman was recognized for performing well in
24 certain areas during the time he was employed by SCSO, and was well respected by
25 some members of the SCSO. Defendant admits that Thurman was employed at the
26 SCSO beginning in 2001, and that during a period of his employment at SCSO,
27 Thurman was a K-9 handler, and that one of his dogs was Laslo. Defendant admits

1 that its IA investigation revealed that Richmond had reported Thurman's racist
2 comments to Sergeants Elliott, Simmons, and Buell, and that all three Sergeants
3 were Mr. Richmond's superiors. Defendant admits that those three Sergeants should
4 have reported Mr. Richmond's allegations up the chain of command. Defendant
5 admits that Sgt. Simmons was the only other Black law enforcement officer at SCSO
6 at the time. Defendant is unable to determine whether Plaintiff was "shaken" by
7 Thurman's comments or whether he "was not quite sure what to do," and therefore
8 lacks sufficient information to admit or deny that allegation, and therefore denies it.
9 Defendant is unable to determine what Deputy Kullman may have reported to
10 "anyone," and therefore lacks sufficient information to admit or deny that allegation,
11 and therefore denies it. To the extent Plaintiff alleges anything different than what
12 is expressly admitted, Defendant denies the same.

13 10. Defendant admits that in May 2019, Plaintiff reported Thurman's racist
14 statement to a representative of the Spokane County Deputy Sheriffs Association,
15 which later resulted in the opening of an IA investigation. Defendant admits that
16 during the IA investigation Richmond alleged that he was discriminated against
17 during the ASU selection process, and reported Thurman's racist comments.
18 Defendant is unable to determine what "other retaliatory actions" Plaintiff may have
19 reported between December 2016 and May 2019, and therefore lacks sufficient
20 information to admit or deny that allegation, and therefore denies it. To the extent
21 Plaintiff alleges anything different than what is expressly admitted, Defendant
22 denies the same.

23 11. Defendant admits that Plaintiff reported the alleged ASU selection
24 discrimination, and Thurman's racist comments, to Kevin Richey. Defendant admits
25 that, with respect to the ASU selection process allegation, Richey later contacted
26 Undersheriff Ellis. Defendant admits that an IA investigation began in May 2019
27 after Plaintiff reported the alleged ASU selection discrimination and Thurman racist

1 comments. Defendant further admits that Richmond did not have a specialty position
2 at the time he applied for the ASU position. Defendant denies the remaining
3 allegations in Paragraph 11. To the extent Plaintiff alleges anything different than
4 what is expressly admitted, Defendant denies the same.

5 12. Defendant admits that multiple SCSO officers were interviewed during
6 the Thurman IA investigation, including deputies Kullman and Van Patten.
7 Defendant admits Deputy Kullman stated in his IA interview that: he and Thurman
8 were “very close”; he had heard Thurman use the word “nigger” “more than once”;
9 Thurman used that word when angry or joking, or when discussing Black Lives
10 Matter, or when a police officer is killed; and that he did not recount any specific
11 incidents of Thurman using the word “nigger.” Defendant denies that Deputy
12 Kullman reported in his IA interview “that Thurman often ‘talked about killing
13 African Americans.’” Defendant is unable to determine whether Deputy Kullman
14 “at no time” reported the incidents of Thurman using the word “nigger,” and
15 therefore lacks sufficient information to admit or deny that allegation, and therefore
16 denies it. Defendant admits that Deputy VanPatten reported to IA that she had heard
17 Thurman use the word “nigger” on one occasion. Defendant admits that Deputy Van
18 Patten reported to the IA investigator that she had heard from Plaintiff of an incident
19 where Thurman made inappropriate comments to another female deputy. To the
20 extent Plaintiff alleges anything different than what is expressly admitted, Defendant
21 denies the same.

22 13. Defendant admits that Sergeant Hines interviewed Plaintiff as part of
23 the IA investigation on May 8, 2019. Defendant admits that during the interview
24 Plaintiff reported that he was concerned that he may have been discriminated against
25 because of his race. Defendant denies that Plaintiff reported any incident of
26 retaliation in the IA interview. To the extent Plaintiff alleges anything different than
27 what is expressly admitted, Defendant denies the same.

1 14. Defendant admits that Plaintiff informed Sgt. Hines in the IA interview
2 that: Deputy Bitzer told Plaintiff that her ASU interview panel b's'd with her the
3 whole time, and that they didn't really ask her anything.² Defendant denies that
4 Deputy Bitzer was given the answers in advance of her interview to potential
5 questions by "ASU members." Defendant admits that the ASU panel asked
6 Richmond a series of questions, and that Thurman was on the ASU interview panel.
7 Plaintiff's allegation that Thurman was made a part of the ASU team during the
8 interviews is unintelligible, and on that basis Defendant denies it. To the extent
9 Plaintiff alleges anything different than what is expressly admitted, Defendant
10 denies the same.

11 15. Defendant admits that had Plaintiff received an ASU position, he may
12 have had the opportunity to work overtime, and he would have received additional
13 training. Defendant admits that Sgt. Bloomer has denied the allegations in Paragraph
14 15 pertaining to him. Defendant denies the remaining allegations in Paragraph 15.
15 To the extent Plaintiff alleges anything different than what is expressly admitted,
16 Defendant denies the same.

17 16. Denied.

18 17. Defendant admits that Plaintiff's complaint that he was discriminated
19 against in the ASU selection process was not sustained as a result of an IA
20 investigation. Defendant admits that Sheriff Knezovich had no reason to doubt that
21 Plaintiff was telling the truth about Thurman's racist comments. Defendant admits
22

23 ² Defendant admits that Deputy Bitzer recounted in her IA interview comments made
24 by Thurman to her during an ASU meeting, including that she and Thurman would
25 have to share a hotel room, and that she might end up pregnant because there would
26 be a lot of single men at the conference. Deputy Bitzer stated in her IA interview she
27 understood Thurman's comments to be joking.

1 that Plaintiff raised concerns about Ellis's relationship with Thurman. To the extent
2 Plaintiff alleges anything different than what is expressly admitted, Defendant
3 denies the same.

4 18. Defendant admits that Thurman was advised on June 13, 2019 that his
5 employment was being terminated as a result of the IA investigation. Defendant
6 further admits that Thurman submitted a written *Loudermill* response but did not
7 show up for an in-person meeting with Sheriff Knezovich.

8 19. Defendant admits that Sheriff Knezovich held a press conference on
9 June 13, 2019. The existence and content of any news articles regarding the press
10 conference speak for themselves. The transcript of the press conference speaks for
11 itself. Defendant admits that it issued a press release regarding Thurman's
12 termination; the content of that press release speaks for itself. Defendant denies that
13 the press release stated that Sheriff Knezovich initiated the investigation into
14 Thurman.

15 20. Defendant denies that Sheriff Knezovich failed to protect Plaintiff after
16 Thurman was terminated. Defendant is unable to determine whether, shortly after
17 the press conference, members of the community began making public accusations
18 against Plaintiff, and therefore lacks sufficient information to admit or deny that
19 allegation, and therefore denies it. Defendant admits that it prepared a memo dated
20 June 13, 2019 with the subject "Posting of Disciplinary Action" regarding Thurman.
21 The memo directed each division commander / lieutenant / supervisor to read and/or
22 inform their employees of the findings and conclusions of the IA investigation.
23 Defendant admits that Plaintiff's name appears in the memo, but denies that he was
24 identified as the complainant. Defendant admits it is likely Lt. Zollarz read the memo
25 aloud, but Defendant is unable to determine who and how many SCSO deputies were
26 present at the time, and therefore lacks sufficient information to admit or deny that
27 allegation, and therefore denies it. Defendant is unable to determine what other

1 deputies told Plaintiff about the memo being read, and therefore lacks sufficient
2 information to admit or deny that allegation, and therefore denies it. Defendant
3 denies that it assured Plaintiff his name would not be released. Defendant is unable
4 to determine whether Plaintiff immediately began being questioned by co-workers,
5 and therefore lacks sufficient information to admit or deny that allegation, and
6 therefore denies it. To the extent Plaintiff alleges anything different than what is
7 expressly admitted, Defendant denies the same.

8 21. Defendant is unable to determine who informed Plaintiff that other
9 ASU members had listened to audio recordings of the IA interviews or who informed
10 Plaintiff that his interview was discussed in a group setting; Defendant therefore
11 lacks sufficient information to admit or deny those allegations, and therefore denies
12 them. Defendant denies the remaining allegations in Paragraph 21.

13 22. Defendant admits that Plaintiff requested that the IA investigation into
14 the ASU selection process continue after Thurman's termination. Defendant admits
15 that Lt. Steve Jones performed some additional investigation into certain aspects of
16 the ASU selection process. Defendant denies the remaining allegations in Paragraph
17 22. To the extent Plaintiff alleges anything different than what is expressly admitted,
18 Defendant denies the same.

19 23. Defendant is unable to determine what Richmond learned about Chief
20 Werner and Inspector Lyons; Defendant therefore lacks sufficient information to
21 admit or deny those allegations, and therefore denies them. Defendant admits that
22 Plaintiff was assigned to the Spokane Valley precinct in May 2019, and that Chief
23 Werner and Inspector Lyons were his superiors in that precinct. Defendant lacks
24 sufficient information to admit or deny what Lyons and Werner specifically stated
25 to "SCSO staff." Defendant denies the remaining allegations in Paragraph 23. To the
26 extent Plaintiff alleges anything different than what is expressly admitted, Defendant
27 denies the same.

1 24. Defendant admits that Sheriff Knezovich called Plaintiff on or around
2 July 8, 2019. Defendant admits that no disciplinary actions were taken against Lyons
3 or Werner related to the Thurman IA investigation. Defendant denies the remaining
4 allegations in Paragraph 24. To the extent Plaintiff alleges anything different than
5 what is expressly admitted, Defendant denies the same.

6 25. Defendant is unable to determine what Thurman has reported to current
7 SCSO personnel after his termination, or what text messages Plaintiff may have
8 obtained, or the content of those text messages; Defendant therefore lacks sufficient
9 information to admit or deny those allegations, and therefore denies them.

10 26. Defendant admits that Plaintiff submitted his resignation from the
11 SCSO on or about July 29, 2019, but denies that it was due to retaliation. Defendant
12 is unable to determine whether Plaintiff “took a substantial pay cut” or “lost his rank”
13 when he took a new position with the Spokane Police Department; Defendant
14 therefore lacks sufficient information to admit or deny those allegations, and
15 therefore denies them. Defendant denies the SCSO has a toxic culture. To the extent
16 Plaintiff alleges anything different than what is expressly admitted, Defendant
17 denies the same.

18 27. Defendant is unable to determine what rumors may continue to this day
19 or whether Deputy Getchell made the comments alleged in Paragraph 27; Defendant
20 therefore lacks sufficient information to admit or deny those allegations, and
21 therefore denies them. Defendant denies the remaining allegations in Paragraph 27.

22 **NOTICE OF RIGHT TO SUE**

23 28. The averments in Paragraph 28 call for legal conclusions, to which no
24 response is required. To the extent a response is required, Defendant denies the
25 allegations in Paragraph 28.

FIRST CAUSE OF ACTION

**DISCRIMINATION BASED ON RACE
(Title VII, 42 U.S.C. §2000e-2 and WLAD, RCW 49.60.180)**

29. Defendant incorporates its prior answers as if fully set forth herein.

30. Denied.

31. Denied.

SECOND CAUSE OF ACTION

**RETALIATION
(Title VII, 42 U.S.C. §2000e-3 and WLAD, RCW 49.60.030)**

32. Defendant incorporates its prior answers as if fully set forth herein.

33. Denied.

34. Denied.

THIRD CAUSE OF ACTION

**CONSTRUCTIVE DISCHARGE
(Washington Common Law)**

35. Defendant incorporates its prior answers as if fully set forth herein.

36. Denied.

37. Denied.

PRAYER FOR RELIEF

No response is required to Plaintiff's Prayer for Relief. To the extent a response is required, Defendant denies Plaintiff's Prayer for Relief and specifically denies that Plaintiff is entitled to any relief whatsoever.

GENERAL DENIAL

Any other unaddressed allegations are hereby denied by Defendant.

DEFENSES AND AFFIRMATIVE DEFENSES

Defendant hereby gives notice to Plaintiff that Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of certain allegations contained in Plaintiff's Complaint or specific knowledge of actions on

1 the part of the Plaintiff or other persons and/or entities that may have contributed to
2 or caused Plaintiff's damages, if any. Until Defendant has had the opportunity to
3 avail itself of its right of discovery, Defendant cannot determine whether all of the
4 below-stated affirmative defenses will be asserted at trial. Defendant asserts these
5 defenses in order to preserve its right to assert them at trial, to give Plaintiff notice
6 of Defendant's intention to assert these defenses, and to avoid any waiver of any
7 defenses. Consistent with the Federal Rules of Civil Procedure, Defendant reserves
8 the right to amend this answer to add, delete, and/or modify denials, affirmative
9 defenses, or avoidances based upon orders issued by any court, or based upon legal
10 theories, facts, and circumstances that may or will be divulged through discovery
11 and/or further legal analysis of the parties' positions in this litigation. Defendant's
12 affirmative defenses are as follows:

- 13 1. Plaintiff has failed to state a claim upon which relief can be granted.
- 14 2. Any emotional distress suffered or claimed to have been suffered by
15 Plaintiff was not reasonable or justified under the circumstances.
- 16 3. All employment decisions regarding or affecting Plaintiff were based
17 upon legitimate, nondiscriminatory, and reasonable business reasons that were in no
18 way related to Plaintiff's race.
- 19 4. With respect to some or all Plaintiff's claims, Plaintiff has failed to
20 timely and properly exhaust all administrative remedies.
- 21 5. Plaintiff's recovery is barred, in whole or in part, to the extent any
22 damages suffered by Plaintiff were proximately caused, in whole or in part, by
23 persons and/or entities that are neither agents nor employees of Defendant, and no
24 legal or factual basis exists for imposing liability upon Defendant for the acts or
25 omissions of any such other persons and/or entities.

1 6. Defendant denies that Plaintiff suffered any injury, but to the extent he
2 claims to have suffered any damage, he failed to mitigate or avoid his damages, if
3 any, in whole or in part.

4 7. Plaintiff's damages are speculative or uncertain and therefore not
5 compensable, in whole or in part.

6 8. Defendant's third cause of action, constructive discharge, is subject to
7 dismissal because there is no cause of action under Washington law for constructive
8 discharge.

9 9. Defendant engaged in good faith efforts to comply with the civil rights
10 laws. Moreover, the conduct complained of by Plaintiff, if performed or carried out,
11 was performed or carried out in good faith based upon reasonable grounds for
12 believing that such conduct was not in violation of Title VII, 42 U.S.C. § 1981, or
13 the Washington law, and therefore, Plaintiff fails to state a claim for punitive
14 damages.

15 10. Defendant is not liable for punitive damages under federal or state law,
16 because neither Defendant, nor any of its employees sufficiently high in its
17 organizational hierarchy, committed any act with malice or reckless indifference to
18 Plaintiff's federally or state protected rights, or approved, authorized or ratified, or
19 had actual knowledge, of any such acts.

20 11. Plaintiff's claims are, in whole or in part, due to conditions that
21 preexisted or are unrelated to claims alleged in the Complaint.

22 12. Some or all of Plaintiff's claims are barred by the applicable statute of
23 limitations.

24 13. Plaintiff's claims are barred, in whole or in part, to the extent that they
25 exceed the scope of or are inconsistent with the charge of discrimination Plaintiff
26 filed with the Equal Employment Opportunity Commission (EEOC) or other statute
27 or regulation.

1 14. Plaintiff's claims are barred, in whole or in part, by applicable statutes
2 of limitation, to the extent they were not presented to the EEOC in a timely fashion,
3 and to the extent that they did not occur within the time frames prescribed by law
4 under Title VII or other statute or regulation.

5 15. If any improper, illegal, or discriminatory acts were taken by any
6 employee of Defendant against Plaintiff, it was outside the course and scope of that
7 employee's employment, contrary to Defendant's policies, and was not ratified,
8 confirmed, or approved by Defendant. Thus, any such actions cannot be attributed
9 or imputed to the Defendant.

10 16. Defendant did not have actual or constructive knowledge of any of the
11 alleged discriminatory acts alleged in Plaintiff's Complaint at any time material to
12 his Complaint.

13 17. If Plaintiff is able to show any discrimination occurred (which
14 Defendant denies), Defendant reserves the right to assert a mixed motive defense.

15 18. Plaintiff's claims are barred, in whole or in part, because Plaintiff did
16 not suffer an adverse employment action.

17 19. Plaintiff's state law claims are subject to dismissal because he did not
18 comply with the Washington Tort Claims Statute, RCW 4.96.020.

19 20. Defendant has in place a clear and well-disseminated policy against
20 discrimination on the basis of race and retaliation and a reasonable and available
21 procedure for handling complaints thereof, which provides for prompt and effective
22 responsive action. To the extent Plaintiff unreasonably failed to take advantage of
23 the preventive or corrective opportunities provided by the company, or to avoid harm
24 otherwise, Plaintiff's claims of alleged discrimination are barred.

25 21. Defendant took swift action in thoroughly investigating Plaintiff's
26 complaint, and took appropriate remedial action.

1 DATED: May 5, 2021

2 LANE POWELL PC

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4
5 By: s/Michael T. Kitson

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ANSWER TO COMPLAINT - 14
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